

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 28017 of 2015 (B)

PETITIONER(S):

**PHILIPS INDIA LIMITED, SURVEY NO.820/17,
KUTHAMBAKKAM VILLAGE, NEAR CHETTIPEDU JUNCTION,
CHENNAI-602 105, REPRESENTED BY
MR.KUMAR VENKITACHALAM-AUTHORISED SIGNATORY.**

**BY ADVS.SRI.JOSEPH JERARD SAMSON RODRIGUES,
SRI.ROVIN RODRIGUES.**

RESPONDENT(S):

**THE COMMERCIAL TAX INSPECTOR,
COMMERCIAL TAX CHECK POST,
WALAYAR-678 625, PALAKKAD DISTRICT.**

BY GOVT. PLEADER SRI.LIJU V.STEPHEN.

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-09-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXT.P1 COPY OF THE PURCHASE ORDER DATED 30TH MARCH, 2015, ISSUED BY M/S.BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL, THIRUVALLA.
- EXT.P2 COPY OF THE IMPORT INVOICE NO.931498293 DATED 20/08/2015, ISSUED BY M/S.PHILIPS, THE NETHERLANDS.
- EXT.P3 COPY OF THE SEA PORT WAYBILL NO.7787933835 DATED 20/08/2015, ISSUED BY UPS ASIA GROUP PTE. LTD., SHANGHAI, CHAINA.
- EXT.P4 COPY OF THE BILL OF ENTRY NO.2493738 DATED 05/09/2015 OF PHILIPS INDIA LIMITED, CHENNAI.
- EXT.P5 COPY OF THE INVOICE NO.950285690 DATED 08/09/2015 FOR Rs.1,35,86,632/- OF PHILIPS INDIA LIMITED, CHENNAI.
- EXT.P6 COPY OF THE DELIVERY NOTE IN FORM NO.JJ BEARING SL. NO.6177 DATED 09/09/2015.
- EXT.P7 COPY OF THE CERTIFICATE OF OWNERSHIP IN FORM NO.16 BEARING NO.6696392604/2015 DATED 08/09/2015 OF M/S.BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL, THIRUVALLA.
- EXT.P8 COPY OF THE E-DECLARATION IN FORM NO.8F BEARING NO.32030525867/20 DATED 08/09/2015, ISSUED BY M/S.BELIEVERS CHURCH MEDICAL COLLEGE HOSPITAL, THIRUVALLA.
- EXT.P9 COPY OF THE NOTICE NO.OR 542/4/15-16 DATED 10/09/2015, ISSUED BY THE RESPONDENT COMMERCIAL TAX INSPECTOR.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C).No.28017 of 2015

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Dated this the 16th day of September, 2015

JUDGMENT

The Petitioner, who is a registered dealer under the KVAT Act is aggrieved by Ext.P9 notice issued to him detaining a consignment of medical equipment that was being transported at the instance of the petitioner to a consignee in Kerala was detained by the respondent. In the writ petition, the petitioner is aggrieved by the insistence of the respondent that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. I have heard the learned counsel for the petitioner and also the learned Government Pleader for the respondent.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I dispose the writ petition with the following directions:

(i) On a perusal of Ext.P9 detention notice, it is seen that the objection of the respondents is essentially that, the petitioner who claimed to have imported the goods into Chennai and was

transporting the said imported goods to Kerala for delivery to the consignee, had not established that the goods were purchased in the course of import at Chennai, and therefore, was obliged to discharge the liability under the CST Act in Chennai. The goods were detained on the assumption that, the consignment comprised of goods that had evaded CST, and therefore, there was a possibility of evasion of tax in Kerala as well. Counsel for the petitioner would submit that, it is not in dispute that, the consignee in Kerala had produced Form 16 declaration stating that the goods were purchased for the own use of the consignee and this has not been disbelieved by the respondent. It is also pointed out that, the liability to pay CST, if any, could arise only in the State of Tamilnadu and not in the State of Kerala.

(ii) It is also submitted that the petitioner is a registered dealer in the State. Taking note of the said submissions, I direct the respondent to release the goods and the vehicle to the petitioner, on the petitioner furnishing a simple bond without surety for the security deposit amount demanded in Ext.P9.

(iii) The respondent shall thereafter transmit the files to the adjudicating authority who shall adjudicate the matter and pass orders, after hearing the petitioner, within two months from the date of

receipt of a copy of this judgment, untrammelled by the observations in this judgment.

(iv) The petitioner shall produce a copy of this judgment and a copy of the writ petition before the respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/

